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The principle is especially illustrated in cases holding a municipality liable for injuries occasioned to persons by negligence in the unskillful operation or construction of its water system.³ Water rates are not then taxes⁴ for which the property is liable, but are charges for the water supplied: and regulations governing them must be non-discriminatory and reasonable. Therefore an ordinance such as the above cannot be passed making the occupier liable for all delinquent bills of a past occupier, unless the power to make such charge a lien on the land has been conferred by a general statute of the state or by the city charter itself.⁵ The case in comment then seems to express the universal rule.

The court further says "the authority to enact the provision under discussion if it exists at all is by virtue of the general incidental power of the municipality". There appears to be no case where such a power has been implied and it is a question whether on principle it could be implied.⁶ There is no common law liability for a property holder to pay the personal debts of a past holder as a condition precedent to a supply of gas or water. Unless the legislature of the state expressly empowers the city to make such charges a lien on the land, it would seem no such ordinance could be passed.⁷

L. C.

MUNICIPAL CORPORATIONS: RAILROAD COMMISSION: REGULATION OF UTILITIES.—Water companies supplying the city of Glendale made a rule requiring each consumer to pay fifteen dollars for installing a meter and making service connections between their water mains in the street and the premises of the

³ *Bailey v. City of New York* (1842), 3 Hill 531, 38 Am. Dec. 669; *City of Yslita v. Babbitt* (1894), 8 Tex. Civ. App. 432, 28 S. W. 702; *Davoust v. City of Alameda* (1906), 149 Cal. 69, 84 Pac. 760. But a city is not liable for damages caused by fire in consequent of its negligent failure to maintain sufficient water works. *Springfield Fire Ins. Co. v. Village of Keesville* (1895), 148 N. Y. 46 N. E. 405.

⁴ *City of Chicago v. Northwestern Mut. Life Ins. Co.* (1905), 218 Ill. 40, 75 N. E. 803. See also *Town of Ukiah City v. Ukiah Water and Imp. Co.* (1904), 142 Cal. 173, 75 Pac. 773.

⁵ *Linne v. Bredes* (1906), 43 Wash. 540, 86 Pac. 858, 6 L. R. A. (N. S.) 707, 117 Am. St. Rep. 1068; *Turner v. Revere Water Co.* (1898), 171 Mass. 329, 50 N. E. 634; *City of Chicago v. Northwestern Mut. Life Ins. Co.* (1905), 218 Ill. 40, 75 N. E. 803; *City of Houston v. Lockwood Inv. Co.* (Tex., 1912), 144 S. W. 685; *Cuba v. Druskin* (1909), 120 N. Y. Sup. 381, 135 N. Y. App. Div. 508. In *City of Atlanta v. Burton* (1892), 90 Ga. 486, 16 S. E. 214, the court says, "The charter did not intend or contemplate that water should be furnished on individual or personal credit, but that the supply should be made a charge on the property to which the water was conveyed."

⁶ "Whenever a by-law seeks to alter a well settled principle of common law, or to establish a rule interfering with the right of an individual or the public, the power to do so must come from plain and direct legislative enactment." *Long v. Taxing District* (1881), 7 Lea. 134, 40 Am. Rep. 55.

⁷ *Farmer v. Mayor of Nashville* (Tenn., 1913), 156 S. W. 189.

consumer. On application of the city the Railroad Commission of California made an order directing the water companies to abrogate their rule and to install meters and make connections without cost to the consumer. This order was reviewed, on petition of the water companies, by the Supreme Court in the case of *Title Guarantee & Trust Company and Miradero Water Company v. Railroad Commission*.¹

The state constitution declares that the right to collect rates for water supplied to a city is a franchise,² and that persons and corporations may establish and operate water works under such regulations as the city may prescribe in its organic law.³ And the Civil Code provides that no corporation formed to supply a city with water may do so unless authorized by the organic law of the city, and in accordance with a contract entered into between the city and the corporation.⁴

Under these provisions of the law, it has been held that water companies conduct their business by virtue of franchises granted by public authority, and are, therefore, subject to all the incidents arising from the relations thereby established.⁵

Again, the Civil Code provides that water companies must supply fresh water to the inhabitants of the city they are established to serve at reasonable rates, without discrimination, and on proper demand, and that the city authorities may prescribe proper rules relating to the delivery of water, not inconsistent with the general laws.⁶ The Supreme Court, in the principal case, construing this provision, applies to California a well-established rule,⁷ that under their franchises water companies must deliver water to the consumer at his premises, and to do so must lay service pipes without cost to the consumer.

Thus far the Supreme Court and the Railroad Commission are in agreement, and the water companies' charge of fifteen dollars for installing meters and making service connections must be considered illegal. But on the question of the jurisdiction of the Railroad Commission, the Supreme Court takes an adverse view. The question was whether Glendale, as a city of sixth class possessed the power, prior to October 10, 1911, the date of the adoption of the constitutional amendment giving the Railroad Commission authority over public utilities, to regulate water companies with respect to their operations and service within the city, and there-

¹ (Aug. 3, 1914), 48 Cal. Dec. 171; and on rehearing, (Sept 2, 1914), The S. F. Recorder, Sept. 4, 1914, p. 8, 48 Cal. Dec. 189.

² Cal. Const., art. xiv, §2.

³ Cal. Const., art. xi, § 19.

⁴ Cal. Civ. Code, § 548.

⁵ In re Russell (1912), 163 Cal. 668, 126 Pac. 875, and cases there cited.

⁶ Cal. Civ. Code, § 549.

⁷ Hatch v. Consumers' Co. (1909), 17 Idaho 204, 104 Pac. 670; Consumers' Co. v. Hatch (1912). 224 U. S. 148.

under to make such an order as that made by the commission. If it had such power prior to October 10, 1911, the court holds that it was excepted from the jurisdiction of the commission, except by vote of the electors of the city. The court, in brief, holds (1) that, under section nineteen of article eleven, and section one of article fourteen of the constitution, giving authority to fix rates, the city may require the installing of meters by the company as a proper means of measurement of water consumed;⁸ and (2) that, under section five hundred and forty-nine of the Civil Code, authorizing the city to "prescribe proper rules relating to the delivery of water", the city could impose upon the company the duty of bearing the expense of laying the pipes necessary for such delivery. The court gives no authorities for this construction of section five hundred and forty-nine of the Civil Code. It is a welcome enough decision, and there is no disposition to find fault with it, but the laws can hardly be regarded as settled with only the brief consideration given thereto.

After coming to this conclusion, the court proceeded, on the first hearing of the case to reenforce its position by considering the applicability of section eleven, of article eleven, which reads: "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

On rehearing the court withdrew all that portion of its opinion, more than half thereof, which related to this provision of the state constitution. It would seem, however, that much of the force of the court's ruling that the city of Glendale possessed the power, and that the Railroad Commission, therefore, did not possess the power to direct the water company to lay service pipes without charge to the consumer, depended upon its interpretation of the authority conferred by this provision of the constitution.

Very briefly it may be stated why the construction of section eleven of article eleven given by the court seems improper. This section has always been considered highly important. It is a grant of the police power to counties and to cities,⁹ and the police power is held to be limited to such measures as are reasonable in their application and which tend in some appreciable degree to promote, protect or preserve, the public health, morals and safety, or the general welfare.¹⁰ And it is held to grant nothing more than what may be included under the term police regulations.¹¹ But in the principal case, the court says: "There is nothing in section eleven

⁸ Citing *Spring Valley W. W. v. San Francisco* (1880), 82 Cal. 286, 22 Pac. 1046, 6 L. R. A. 756, 16 Am. St. Rep. 116.

⁹ *Denton v. Vann* (1908), Cal. App. 677, 97 Pac. 675; *In re Ackerman* (1907), 6 Cal. App. 5, 91 Pac. 429; *In re Pfahler* (1906), 150 Cal. 71, 88 Pac. 270.

¹⁰ *Ex parte Quarg* (1906), 149 Cal. 79, 84 Pac. 766.

¹¹ *Ex parte Hodges* (1890), 87 Cal. 162, 25 Pac. 277.

limiting it to regulations for the preservation or promotion of the public health, public morals, or the public use of the streets."¹² This view is undoubtedly correct according to the better interpretations of what constitutes the police power.¹³ The court continues: "The relations of a public utility engaged in public service for the inhabitants of a city to the inhabitants they serve and the exactions and charges they make or the conveniences they afford to such inhabitants, are clearly matters within the domain of municipal affairs for the care of which the city was organized. (*Home T. & T. Co. v. Los Angeles*, 155 Fed. 564, S. C. 211 U. S. 265.)" The Federal Circuit Court, however, in the case here cited, was construing the phrase "municipal affairs" as used in section six of article eleven of the California constitution, and very properly held that the relations of a public utility to the city it was created to serve might be regulated by the city under the right authorization. And, it is submitted, "municipal affairs", as used in section six are not to be confounded with "police regulations" as used in section eleven. Matters pertaining to the police power may be municipal affairs¹⁴ but do all "municipal affairs" fall within the police power so far as it is conferred by section eleven of article eleven?¹⁵

Without discussing the authorities, which certainly seem to hold that the powers in question do not fall under a general grant of the police power, but must otherwise be conferred,¹⁶ the principle favored by the court in the now expunged portion of the original opinion would seem to obliterate the line of distinction between the "municipal affairs" of section six and the "police regulations" of section eleven. Of course, "municipal affairs", in the sense of section six, must be specifically provided for either by the municipal charter or by general law.¹⁷

W. C. J.

NEGLIGENCE: EXCEEDING SPEED LIMIT: NEGLIGENCE PER SE.—With the decision of the Supreme Court of Washington in the case of *Anderson v. Kennear*¹ another jurisdiction has taken the unqualified position that the violation of a city ordinance or state law is negligence *per se*. In a suit for damages it was proved

¹² 48 Cal. Dec. 171, 178.

¹³ *Mutual Loan Co., Martell* (1911), 222 U. S. 225, 55 L. Ed. 175, 32 Sup. Ct. 74.

¹⁴ *People v. Williamson* (1902), 135 Cal. 415, 67 Pac. 504 (Mr. Justice Temple's opinion).

¹⁵ See 1 Cal. Law Rev. 132.

¹⁶ *City of St. Louis* (1888), 96 Mo. 623, 10 S. W. 197; *In re Pryor* (1895), 55 Kan. 724, 41 Pac. 958; *State v. M. & K. Tel. Co.* (1905), 189 Mo. 83, 88 S. W. 41; *Jacksonville v. Southern Bell Tel. and Tel. Co.* (1909), 57 Fla. 374, 49 So. 509; *Bluefield Water Works & Imp. Co. v. City of Bluefield* (1911), 69 W. Va. 1, 70 S. E. 772; *Dillon, Mun. Corp.*, 5th ed., p. 2230.

¹⁷ *Fragley v. Phelan* (1899), 126 Cal. 383, 58 Pac. 923.

¹ (July 27, 1914), 141 Pac. 1151.